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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: Stephen Selle

Title: ADJUSTABLE THRESHOLD FASTENER WITH FLANGES

Filing Date: April 15, 2004

Serial No. 10/824,915

Examiner: Jeffrey Andrew Sharp

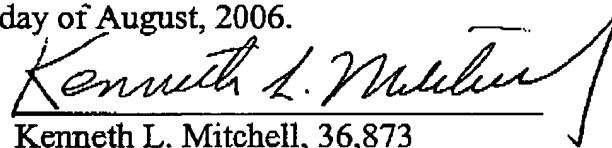
Group Art Unit: 3677

Attorney Docket No. 8206

August 4, 2006

Commissioner for Patents
P. O. Box 1450
Alexandria, Va. 22313-1450

Fax certification: I hereby certify that the instant Supplemental Appeal Brief
has been faxed to the USPTO this 4th day of August, 2006.


Kenneth L. Mitchell, 36,873

SUPPLEMENTAL APPEAL BRIEF

Dear Sir:

In response to the October 31, 2005 final office action applicant responds as follows. A notice of appeal was filed on January 31, 2006 along with the appeal fee. This SUPPLEMENTAL APPEAL BRIEF is being submitted according to a notice

of non-compliant appeal brief dated July 19, 2006 wherein the Examiner complained about certain alleged deficiencies in the originally and timely filed appeal brief. The alleged deficiencies were: that separate headings were not included for Issue 5 claims 2, 3, 4 and Issue 5 claims 5-11; that an Evidence Appendix and Related Appeals Appendix were not attached; and that the undersigned's PTO registration number was not indicated on the originally filed Appeal Brief. A telephone call was placed to the Examiner on August 3, 2006 and the undersigned indicated that it was believed proper under the rules to set forth issue 5, claims 2, 3 and 4 and issue 5, claims 6-11 grouped together under respective headings. See, 37 CFR 41.37c(1)(vii). An Evidence Appendix indicating no evidence and a Related Appeals Appendix indicating no related appeals are attached. The PTO registration number is indicated.

REAL PARTY IN INTEREST

The real party in interest is the Stafast Products, Inc.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences which will directly affect or have a bearing on the Board's decision in this pending appeal.

STATUS OF THE CLAIMS:

Claims 1-11 have been finally rejected, are under appeal and are found in the

attached appendix.

STATUS OF AMENDMENTS

No amendments filed subsequent to the final rejection have been made to the claims or the description.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 1 recites a fastener 300 comprising: a threaded stud 302; a rectangularly-shaped nut 321 having first and second ends; the first and second ends each having a raised flange 305A, B; and, the threaded stud interengaging the rectangularly-shaped nut. Reference is made to the specification page 6, lines 17 et seq. , wherein Fig. 3 is a perspective view of the adjustable threshold fastener 300 of the instant invention. Receptacles 301, 307 provide for rotational adjustment of the threaded stud 320. Nut 321 is generally rectangularly shaped and includes a forward flange 305A and a rearward flange 305B. The head or support surface 302 of the threaded stud 320 is illustrated in Fig. 3. Receptacle 301 is illustrated in Fig. 3 for engagement with a screw driver to rotate the threaded stud.

In regard to claim 2 a fastener as claimed in claim 1 is recited wherein the rectangularly-shaped nut 321 includes a raised crown having interior threads thereon. Nut 321 further includes threads therein and the threads extend into crown 306. See, specification page 7, line 4.

In regard to claim 3 a fastener as claimed in claim 1 is recited wherein the raised flanges extend upwardly partially enveloping the threaded stud. See specification page 6, lines 21 et seq.

In regard to claim 4 a fastener as claimed in claim 1 is recited wherein the threaded stud 320 includes first 301 and second 307 adjustment receptacles. See specification page 6, lines 17 et seq.

Claim 5 recites and claims a threshold 500 adjustment device, comprising: a threaded stud 320 having an adjustment receptacle 301; a rectangularly-shaped nut 321 having flanges 305A, 305B; the threaded stud interengaging the nut; a threshold having a channel formed by walls 501, 502 and 503 (see, specification page 8, lines 11 et seq.); the channel includes a bore (Fig. 5) therein; the threaded stud being press-fit in the bore of the channel; and, the rectangularly-shaped nut 321 having flanges residing in the channel.

Fig. 5 is a bottom view of a threshold 500 with the fastener 300 of the instant invention press-fit therein. Walls 502 and 503 prevent excessive rotation of the rectangular nut 321. Fig. 5A is a cross-sectional view 500A taken along the lines 5A-5A of Fig. 5 illustrating the press-fit attachment of the fastener 300 of the instant invention in a threshold. When the threaded stud 320 is press fit into the bore of the threshold the threads 304 of the stud grip the wall 501 of the threshold. Claim 6

recites a threaded adjustment device as claimed in claim 5 wherein the nut is constrained against rotation by the channel. Reference numeral 570 indicates rotation of the nut as the receptacle is rotated in a counterclockwise direction as viewed in Fig. 5. See specification page 8, line 13.

Claim 7 recites a threshold adjustment device as claimed in claim 6 wherein the threaded stud includes a flat head and wherein the flat head is adjustable in a plurality of positions. When threaded stud 320 is rotated, surface 308B of nut 321 remains in contact with wall 501 of the threshold. Nut 321 provides support to the threshold when the threaded stud is extended out of the nut as illustrated in Fig. 5B.

Claim 8 recites a threshold adjustment devices as claimed in claim 6 wherein the threaded stud threadingly engages the channel of the threshold. The threads 304 are rotated thereafter as necessary to install and plumb the threshold and surface 302 of the stud is extracted from the threshold. This extraction causes the formation of a helical pattern as represented by reference numeral 550 to be formed in the wall 501 which has a thickness as represented by reference numeral 551.

Claim 9 recites a threshold adjustment device as claimed in claim 6 wherein the nut includes a first surface and the first surface of the nut engages the channel of the threshold. Nut 321 includes inner surface 308A and engagement surface 308B illustrated in Fig. 3B. Claim 10 is the same as claim 9 but dependent on claim 7

instead.

Claim 11 recites and claims a curvilinear delivery track 423 for delivering a plurality of fasteners 300 and the delivery track includes a head guide 421 and a flange guide 422, wherein: each of the fasteners comprises a U-shaped in cross-section nut 321 adapted to receive a threaded stud 320; each of the studs includes a support head 302; each of the U-shaped nuts includes a forward 305A and a rearward flange 305B; the head guides of the delivery track engage the support heads of the fasteners preventing excessive rotation or vertical displacement of the fastener; and, the support heads 302 of the fasteners in combination with the head guide prevent shingling and/or jamming of the delivery track. See specification page 7, lines 18 et seq. wherein Fig. 4 is a side interior view 400 of a section of a curvilinear track 423 with several fasteners 300 of the instant invention located therein. Track 423 includes a nut guide 422, a support guide (head guide) 421 and a rimmed portion or edge 420. The flanges 305A and 305 B of a fastener routinely collide with the adjacent neighboring fasteners and their flanges. Due to the respective height of the flanges, their rotation is limited as is their vertical displacement. Flanges 305A and 305B each have respective top portions 309A and 309B which engage 450 the rimmed edge 420 as illustrated in Fig. 4. Further, the flanges 305A, 305B, are vertically high enough as illustrated in Fig. 3D to prevent

shingling and jamming. Thus the angle 451 formed between the respective flanges 305B and 305A as illustrated in Fig. 4 is acute and limited. Fig. 4B is an enlargement 400B of a portion of Fig. 4 illustrating the interaction between the flanges 305A, 305B of neighboring fasteners.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

ISSUES

Issue 1. Did the Examiner correctly reject Claim 4 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention?

Issue 2. Did the Examiner correctly reject claims 1-3 and 5-10 as rejected under 35 U.S.C. 102(b) as being anticipated by Bursk et al. US-4,352,258?

Issue 3. Did the Examiner correctly reject Claim 11 under 35 USC 102(b) as being anticipated by Selle US-5,993,320?

Issue 4. Did the Examiner correctly reject claim 4 under 35 USC 103(a) as being unpatentable over Bursk et al. US-4,352,258 in view of Mettler US-6,185,870?

Issue 5. Did the Examiner correctly reject claims 1-11 as being obvious over Applicant's admission of prior art in view of Selle US-6,640,968 or Liestner?

ARGUMENT

Issue 1

Whether or not the Examiner correctly rejected Claim 4 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention?

Issue 1 in regard to Claim 4

In the rejection the Examiner states that “[i]t is unclear as to what “first and second adjustment receptacles” are (threads? Means for applying torque?). This claim has been treated as it is definite (adjustment receptacle generally being a “torque transmitting recess” or the like)”. Receptacles 301, 307 provide for rotational adjustment of the threaded stud 320. See Figs. 3-3C. Each end of the stud includes a screw driver receptacle for rotation of the stud relative to the nut and the bore in the wall of the channel. See specification page 4, lns. 8 et seq. Claim 4 is definite and believed patentable.

Issue 2

Whether or not the Examiner correctly rejected claims 1-3 and 5-10 under 35 U.S.C. 102(b) as being anticipated by Bursk et al. US-4,352,258? It is unclear whether the Examiner is rejecting claim 11 as well as anticipated by Bursk et al. in that claim 11 is referenced by the Examiner.

Issue 2 in regard to Claim 1

The Examiner is reading upwardly turning part 85 (Fig. 9) and raised or curved portion 88 of the sheet-metal nuts 65 of the preassembled fastener within the base 20 as illustrated in the '258 patent to Bursk et al. as the claimed raised flanges. First, parts 85 and 88 of the '258 patent to Bursk et al. are not at the first and second ends of the rectangularly-shaped nut; rather, parts 85 and 88 are at the sides of the nut. Part 85 of Bursk et al. is snap-fit into undercut recess 80 formed in base 20 as shown in Fig. 6 and part 88 is trapped beneath channel section 35 of upper tread 34. Channel section 35 is snapped over base 20 which in turn holds part 88 in place.

Specifically, Bursk et al. state at col. 5, lns. 38 et seq. that "[t]he upwardly turned end 85 is proportioned to be received in one of the cut-out recesses 80 formed in the base 20, as shown in Fig. 6, and thus locates the nut 65 at its desired longitudinal spacing in groove 28 with respect to the longitudinal spacing of the screw 60 carried by the threshold 22. When it is so spaced, the opposite leg 84 and the adjacently upwardly turned end or leg 38 of the treading 24 defines a space therebetween into which the depending leg 54 of the threshold 22 is received in the assembled condition. This transverse space is somewhat less than the thickness of the leg 54 to form a slight interference fit so that the nut 65 is urged to the right when viewed in Fig. 4, thus locking the upwardly turned end 85 into its associated

recess 80, and further urging the channel section 35 to the left as viewed in Fig. 4, thus locking the projection 42 under the lip 40. The upwardly curved or raised portion 88 engages the channel section 35 at the web portion 37 and further assures the interlocking of the cladding 24 with the base."

Parts 85 and 88 of Bursk et al. are not raised flanges; rather, they are fittings which interengage other components of the sill to hold the adjustment mechanism in place. The primary motivation of the claimed flanges of the instant invention is the transport of the fasteners as illustrated in Fig. 4, 4A, and 4B. The location of applicant's fastener in the sill as illustrated in Figs. 5, 5A and 5B is dictated by the placement of the openings 550 in the sill, not by recesses 80 and grooves in walls 53. While it is recognized that all of these aspects are not found in claim 1 the structural differences of parts 85, 88 and flanges 305A, B are relevant to the determination of whether or not parts 85, 88 are the claimed raised flanges. Another distinction and difference between the claimed subject matter in regard to the flanges is that the parts 85, 88 of the Bursk et al. reference are not on the ends of the rectangularly-shaped nuts. Rather, the parts 85, 88 are on the sides of the nut. Parts 85, 88 of the reference have a different structure in location, shape, contour and function and are not symmetric.

Bursk et al. does not disclose any structure as a raised flange. Parts 85, 88 are

not raised flanges. Instead they are pieces of bent sheet-metal designed to interfit a nut with a lanced opening into a sill body to immobilize it from rotation. In fact the highest portions of parts 85, 88 are well below the surface of the nut and therefore cannot be considered as raised flanges under any definition of a raised flange. Fig. 3D of applicant's invention clearly illustrates flanges 305A, 305B extending above the plane of the nut 321. Nut 321 includes inner surface 308A and engagement surface 308B illustrated in Fig. 3D which define the plane or surface above which the flanges 305A, 305B rise. Claim 1 is patentable.

Issue 2 in regard to claim 2

Claim 2 recites a fastener as claimed in claim 1 with a rectangularly-shaped nut 321 which includes a raised crown 306 having interior threads thereon. The Examiner identified lanced opening 62 formed in the upper surface of the screw retained or nut generally formed as indicated by reference numeral 65 as the raised crown. The metal defining the opening is twisted into a semi-helix so as to receive the threads of the screw 60. See, col. 4, lns. 33-36. Clearly, a semi-helix does not make up a raised crown for at the least the reason that the crown is not complete but would only be partial. Perhaps the Examiner is reading the claim and construing anything that is raised as the crown but this is clearly a mutilation of the meaning of "crown". A "crown" is not thought of as being unbalanced. Claim 2 is patentable.

Issue 2 in regard to claim 3

Claim 3 recites a fastener as claimed in claim 1 wherein the raised flanges extend upwardly partially enveloping the threaded stud. Again, parts 85, 88 of Bursk et al. are not raised flanges and do not in any way envelope or surround the stud. Rather, legs 83 and 84 surround or envelope the screw 60. Claim 3 is patentable.

Issue 2 in regard to claim 5

Claim 5 recites and claims threshold adjustment device, comprising: a threaded stud having an adjustment receptacle; a rectangularly-shaped nut having flanges; the threaded stud interengaging the nut; a threshold having a channel; the channel includes a bore therein; the threaded stud being press-fit in the bore of the channel; and, the rectangularly-shaped nut having flanges residing in the channel. The Examiner in his diagram on page 8 of the final office action indicates that the threaded stud threadingly engages the threshold channel and the Examiner points to the plastic threshold 22 and in particular points to the arcuate surfaces 67 and 68. The arcuate ledges 67 and 68 in fact are plastic surfaces which are bent as the stud is pushed up past ledges 67 and 68. The ledges 67 and 68 define a clearance space 69 with the cap portion 50 to receive the enlarged head 70 of the screw 60 while providing for free or unrestricted rotation of the screw 60. Therefore, it is

conclusive that the screw 60 is not press-fit into the bore of the channel of the reference. Further, the Examiner in the diagram on page 8 indicates a "channel" but does not articulate the bounds or the extent of the channel. Claim 5 recites a flange having a channel in the threshold. The claimed rectangularly-shaped nut includes flanges all of which reside in the channel. Claim 5 does not recite a nut residing partially within the channel. Therefore, Bursk et al. lacks this structure and claim 5 is patentable.

Issue 2 in regard to claim 6

Claim 6 recites and claims a threaded adjustment device as claimed in claim 5 wherein the nut is constrained against rotation by the channel of the threshold. This structure is lacking in Bursk et al. The nut 65 of Bursk et al. is not restrained by the channel of the threshold. Rather, the nut 65 of Bursk et al. is restrained by groove 28 of the base 20, not a channel of the threshold as claimed. Claim 6 is not anticipated by Bursk et al.

Issue 2 in regard to claim 7

Claim 7 recites and claims a threshold adjustment device as claimed in claim 6 wherein the threaded stud includes a flat head and wherein the flat head is adjustable in a plurality of positions. It appears that screw 60 does have a flat head and is adjustable in a plurality of positions. Claim 7 is dependent on claim 6 and as

indicated above some of the structure of the independent claim 5 and dependent claim 6 is totally missing and therefore claim 7 is not anticipated by the Bursk et al. reference.

Issue 2 in regard to claim 8

Claim 8 recites and claims a threshold adjustment device as claimed in claim 6 wherein said threaded stud threadingly engages the channel of the threshold. As indicated above screw 60 is rotatable and the ledges 67 and 68 define a clearance space 69 with the cap portion 50 to receive the enlarged head 70 of the screw 60 while providing for free or unrestricted rotation of the screw 60. When the threaded stud 320 of applicant's invention is press fit into the threshold the threads 304 of the stud grip the wall 501 of the threshold. The threads 304 are rotated thereafter as necessary to install and plumb the threshold and surface 302 of the stud is extracted from the threshold. This extraction causes the formation of a helical pattern as represented by reference numeral 550 to be formed in the wall 501 which has a thickness as represented by reference numeral 551. When threaded stud 320 is rotated, surface 308B of nut 321 remains in contact with wall 501 of the threshold. See, applicant's specification page 8, lns. 12 et seq., Figs. 5, 5A and 5B. Applicant agrees with the Examiner that the claim should be amended to recite "device" instead of "devices." Therefore, claim 8 is not anticipated by the Bursk et al.

reference.

Issue 2 in regard to claim 9

Claim 9 recites and claims threshold adjustment device as claimed in claim 6 wherein the nut includes a first surface and the first surface of the nut engages the channel of the threshold. The Examiner's diagram indicates an apparent contact of leg 83 of the nut 65 engaging leg 52 of threshold 22 of Bursk et al. The examiner has made no attempt to identify a first surface of the nut. Nut 321 of applicant's invention includes inner surface 308A and engagement surface 308B illustrated in Fig. 3B. See specification page 7, lns. 3 et seq. Leg 83 is not the claimed first surface (engagement surface 308B) of the instant invention. Claim 9 is not anticipated by Bursk et al. and is patentable.

Issue 2 in regard to claim 10

Claim 10 recites and claims a threshold adjustment device as claimed in claim 7 wherein the nut includes a first surface and the first surface of the nut engages the channel of the threshold. Claim 10 is patentable for the reasons given above in connection with claims 9 and 7.

Issue 2 in regard to claim 11

Claim 11 recites and claims a curvilinear delivery track for delivering a plurality of fasteners and the delivery track includes a head guide and a flange guide,

wherein: each of the fasteners comprises a U-shaped in cross-section nut adapted to receive a threaded stud; each the stud includes a support head; each of the U-shaped nuts includes a forward and a rearward flange; the head guides of the delivery track engage the support heads of the fasteners preventing excessive rotation or vertical displacement of said fastener; and, the support heads of the fasteners in combination with the head guide prevent shingling and/or jamming of the delivery track. Bursk et al. has none of this structure and therefore claim 11 is patentable.

Anticipation requires that there be an identity of invention. Anticipation requires that all elements and limitations of the claim are found within a single prior art reference. There must be no difference between the claimed invention and the reference disclosure. *Carella v. Starlight Archery and ProLine Co.*, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed. Cir. 1986). *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1549, 220 USPQ 193, 198 (Fed. Cir. 1983). *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 781 (Fed. Cir. 1983).

Issue 3. Whether the Examiner correctly rejected Claim 11 under 35 USC 102(b) as being anticipated by Selle US-5,993,320?

Issue 3 in regard to claim 11

Claim 11 recites and claims a curvilinear delivery track for delivering a plurality of fasteners, the delivery track includes a head guide and a flange guide,

wherein: each of the fasteners comprises a U-shaped in cross-section nut adapted to receive a threaded stud; each stud includes a support head; each of the U-shaped nuts includes a forward and a rearward flange; the head guides of the delivery track engage the support heads of the fasteners preventing excessive rotation or vertical displacement of the fastener; and, the support heads of the fasteners in combination with the head guide prevent shingling and/or jamming of the delivery track.

The Examiner has failed to state a valid *prima facie* basis for rejecting claim 11 under 35 USC 103(a) as the Examiner has not applied the elements of claim 11 to the alleged prior art. Fig. 3 of Selle '320 schematically illustrates a problem known as shingling when prior art Tee nuts are conveyed in a feed track. See, col. 1 lns. 41 et seq. However, nothing in Selle '320 discloses a delivery track which includes a head guide and a flange guide. Nor does Selle '320 include a U-shaped in cross-section nut despite the Examiner's assertion that it does. Selle '320 does not disclose or suggest studs having support heads and a head guide. Nor does Selle '320 include a nut having forward and rearward flanges. The Examiner's implicit criticism of the claim language insofar as the claim lacks a positive recitation of the threaded stud having support head is correct and would be an improvement to the claim. Nonetheless the claim is believed definite and contains patentable subject matter.

MPEP section 2143.01 indicates that the prior art must suggest the desirability of the claimed invention. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. 'The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.' In regard to claim 11 the Examiner has not identified an explicit or implicit teaching, suggestion or motivation in Selle '320 to modify it to arrive at the invention as claimed in claim 11.

Issue 4. Whether the Examiner correctly rejected claim 4 under 35 USC 103(a) as being unpatentable over Bursk et al. US-4,352,258 in view of Mettler US-6,185,870?

Issue 4 in regard to claim 4

Claim 4 recites and claims a fastener as claimed in claim 1 wherein the threaded stud includes first and second adjustment receptacles. Claim 4 is patentable for at least the reason that claim 1 is patentable. Further Bursk does not include two adjustment receptacles. Further, Mettler '870 does not include two adjustment

receptacles 301, 307 as claimed. Nor is Mettler properly combinable with Bursk because although Mettler and Bursk et al. concern threshold design they do not employ the same technology. Mettler employs a tee-nut, Bursk et al. employs a nut 65 which is constrained by base 20 and applicant's invention employs neither of these technologies. Therefore, claim 4 is believed patentable over Bursk '258 in view of Mettler '870.

Issue 5. Whether the Examiner correctly rejected claims 1-11 as being obvious over Applicant's admission of prior art in view of Selle US-6,640,968 or Liestner?

Issue 5 in regard to claim 1

In the rejection of July 11, 2005, the Examiner suggests that the prior art (Figures 1-2A) contains each and every limitation found in claims 1-11 with the exception of the raised flanges (305A, 305B). In the final office action dated October 31, 2005, the examiner provided a diagram on page 4 of the office action to demonstrate and more clearly point out the basis for the rejection in the July 11, 2005 office action. The Examiner states on page 3 of the October 31, 2005 office action that

"[t]he delivery track shown in the drawings could be broadly construed as a "threshold" having a "channel" with a "bore therein". The examiner takes the position that all elements except for a raised crown and flanges are expressly disclosed in the prior art figures of the instant application."

Claim 1 recites a fastener comprising: a threaded stud 302; a rectangularly-shaped nut 321 having first and second ends; said first and second ends each having a raised flange 305A, B; and, said threaded stud interengaging said rectangularly-shaped nut. Claim 1 does not recite a threshold, a channel and a bore therein. The Examiner's basis for rejection does not constitute a valid *prima facie* demonstration that the prior art illustrated in applicants' patent application includes a threaded stud interengaging a rectangularly shaped nut. In the prior art the threaded stud and the rectangularly shaped nut do not interengage each other because they are one piece. Applicant's invention as recited in claim 1 includes a threaded stud and a nut (ie, two separate pieces). Selle '968 does not include or suggest flanges. It does, however, illustrate lips or wings 301, 302 which are guided in the slot denoted by reference numeral 602 in Selle '968. The Selle '968 patent does not use the word "flange" indicating the dissimilarity of the technology.

In regard to the '722 patent to Liestner it does use the word flange in connection with reference numeral 14 of the Tee-nuts of the '722 patent. The flanges 14 of Liestner are octagonal in shape and are carried by laminations or strips. The technology of Liestner is different from that disclosed in the patent application insofar as prior art is concerned and it is also different from the '968 Selle disclosure.

MPEP section 2143.01 indicates that the prior art must suggest the desirability of the claimed invention. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. 'The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.' Here, it is respectfully suggested that the Examiner is improperly combining the admitted prior art and the Selle '968 reference. Here, it is respectfully suggested that the Examiner is improperly combining the admitted prior art and the Liestner '722 reference.

The problem to be solved by the Selle '968 reference (guiding a washer in a guide track with the wings engaging the guide track) or the '722 patent to Liestner (to provide a high speed T-nut strip usable effectively with fastener insertion equipment) is totally different from the problem to be solved by the instant application (prevention of shingling of adjustable threshold fasteners). The references themselves do not explicitly provide any suggestion or motivation for combining the references. Nor can any suggestion or motivation be implicitly found

since the references themselves are structurally different each from the other and they are directed toward solving different problems. Nor can any suggestion or motivation be implicitly found since the references are structurally different from the instant invention and they are each directed toward solving different problems using different technology.

In *In re Kotzab*, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) the court held that a “finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the claimed invention] to make the combination in the manner claimed” must be made. In the instant application, the Examiner has not identified a specific understanding or principle within the knowledge of the skilled artisan that would have motivated one with no knowledge of the claimed invention to make the combination in the manner claimed. Nowhere does the Examiner identify the artisan given the differences in the problems to be solved, nor does the Examiner explain the motivation for combining the structure of admitted prior art and the Selle '968 or the Liestner '722 references. The Examiner makes the statement that Liestner prevents “jamming and/or shingling of said nuts when transported through a delivery track ...and makes obvious a “raised crown having interior threads thereon”. First, Liestner uses a tape or strip to solve the problem of feed slide jamming and the argument made by the

Examiner that the flat surfaces 14 of Liestner prevent jamming is just simply not accurate.

Assuming, arguendo, that a person of ordinary skill in some art had the Selle '968 and/or the Liestner 722 reference and the admitted prior art before him/her, the Examiner has failed to identify what the art is and why the person would have the references before him/her. For example, if working in the art of t-nuts and/or washers why would a person of ordinary skill in that art be looking at the threshold adjustable fasteners. And, vice versa, if working in the art of threshold adjustable fasteners why would a person of ordinary skill in that art be looking at the t-nuts and washers. Further, there is no teaching or suggestion in Selle '968 to use a flange, lip or wing without a guide. Further, there is no teaching in Selle '968 or Liestner '722 to employ a threaded stud or rectangularly shaped nut or any nut or stud at all. Selle '968 doesn't include a nut or stud at all and Liestner '722 doesn't include a stud. It must be remembered that a person of ordinary skill in the art is a person that would not innovate. A person of ordinary skill in the art is one who thinks along the line of conventional wisdom and does not take to innovate. *Standard Oil Co. v. American Cyanamid Co.*, 774 F.2d 448, 454, 227 USPQ 293 (Fed. Cir. 1985).

Selle '968 discloses use of raised lips on a stud retainer (washer) in combination with a delivery track to prevent shingling. The Selle '968 reference

does not disclose a rectangularly shaped nut having first and second ends with raised flanges.

The combination of Selle '968 and the admitted prior art (Figures 1-2A) would not result in the instant invention because Selle '968 employs lips 301, 302 which are guided by channel 602 in the track. Moreover, the '968 reference restrains the washers from shingling because the body 304 of the washer is restrained from upward and downward movement by track 603, 604. In Selle '968 it is the track 603, 604 which restrains the upward movement of the body 304 of the washer, not the lips 301, 302. Lips 301, 302 are for directional guidance in the track, not to prevent shingling. The instant invention utilizes flanges to prevent shingling. The flanges 305A, 305B of the instant invention extend horizontally and vertically to limit motion of the fastener within the track.

With respect to Liestner '722, the Examiner suggested in the first office action that it would have been obvious at the time the invention was made to employ opposing flanges (16) to a prior art nut, in order to prevent shingling or jamming within a channel, track delivery mechanism, or the like. Liestner '722 discloses and teaches the use of a fastener strip with a grip portion and flanges with two sides that are capable of being bonded together with a membrane material. The Liestner '722 invention attempts to address the shingling problem by bonding adjacent flanges

together with an adhesive or web material and keeping the adjacent flanges attached sequentially with membrane material. In addition, the Liestner '722 reference contains a flange (14) and prongs or spikes (16) which are directed perpendicular to the flange. The flange is primarily directed to receiving a bonding material that allows it to be linked directly to the adjacent flange of the following grip. The prongs or spikes 16 in Liestner '722 are used to secure the t-nut to the surface of the workpiece (col. 1, lns 22-26), unlike the flanges in the instant invention whose structure serves to prevent shingling. The prongs or spikes 16 in Liestner '722 are not flanges. Liestner '722 emphasizes the prevention of shingling by bonding flanges directly and continuously together, while the instant invention uses flanges on each side individually to keep each stud separate and apart to prevent shingling. The prior art (Figures 1-2A) is not properly combinable with Liestner '722 or Selle '968. If one were to combine the admitted prior art and Liestner '722, the resulting structure would be a line of studs as seen in Figures 1-2A attached together with an adhesive, tape, or web material as in Figure 4 of the Leistner '722 reference.

The references identified by the Examiner taken individually or in combination do not disclose the invention as claimed. It is respectfully suggested that the Examiner has attempted to employ hindsight reconstruction of the claimed invention by sifting through the prior art and attempting to extract and combine bits

and pieces of it to arrive at the claimed invention.

Issue 5 in regard to claims 2, 3 and 4

In regard to claim 2 the Examiner's statement that Liestner makes obvious employing a "raised crown having interior threads thereon" to provide a longer length of engagement is not understood given the disclosure of Liestner as recited above in connection with claim 1. Further, in regard to claim 2 it is not apparent how the '968 patent to Selle is relevant. How would the retainer of the '968 patent be used in conjunction with the admitted prior art? The Examiner is silent as to the modification. None of the references suggest or disclose a rectangularly shaped nut which includes a raised crown having interior threads thereon.

In regard to claim 3 how is the '968 patent used in combination with the admitted prior art? How are Liestner's taped tee nuts described in the '722 patent used with the admitted prior art to arrive at the invention of claim 3.

In regard to claim 3, none of the references suggest or disclose raised flanges which extend upwardly partially enveloping the treaded stud. Claim 4 is patentable as being dependent on claim 1 which is patentable. In regard to claim 4, none of the references suggest two receptacles as they are used differently, one from each end of the device.

Issue 5 in regard to claims 5-11

In regard to claim 5, Selle '968 and/or Liestner '722 in combination with the admitted prior art do not teach or suggest the studs being press-fit into the channel.

In regard to claims 6 and 7, Selle '968 and Liestner '722 are not relevant for use in a threshold and combining their teachings in the use and structure as set forth in claims 6 and 7 wherein the nut is constrained and the stud is adjustable doesn't make sense in view of the admitted prior art.

In regard to claim 8, Selle '968, Liestner '722 and the admitted prior art do not teach a threaded stud engaging the channel of a threshold. Selle '968 and Liestner '722 aren't used in connection with the threshold. Claims 9 and 10 recite the engagement of the first surface (engagement surface) of the nut with the channel. Liestner '722 and Selle '968 are silent as to this aspect and not properly combinable with the admitted prior art.

Assuming , arguendo, that the combination of Selle' 968 and the admitted prior art is proper how would the track of Selle '968 be modified and adapted to accommodate the support head and limits its vertical movement? A completely different track would be needed and a person of ordinary skill in the art having the '968 patent, the '722 patent and the admitted prior art in front of him/her would not be able to substitute (at all) the support head of the instant invention with the wing guides of the '968 patent without major modification and invention.

MPEP section 2143.01 indicates that the prior art must suggest the desirability of the claimed invention. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. 'The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.'

In regard to claims 1-11 the Examiner has not explained the motivation and/or suggestion to combine Selle '968, Liestner '722 and the admitted prior art. Nor has the Examiner explained how the references would or could be combined by a person of ordinary skill in the art. Nor is the combination proper as the technology of the each of the references is directed toward solving different problems.

SUMMARY AND CONCLUSION

Claims 1-11 are patentable. Wherefore, it is respectfully requested that the rejection of the claims be reversed and that the same be determined as allowable.

APPENDICES

A Claims Appendix is attached. There is no evidence to identify in the

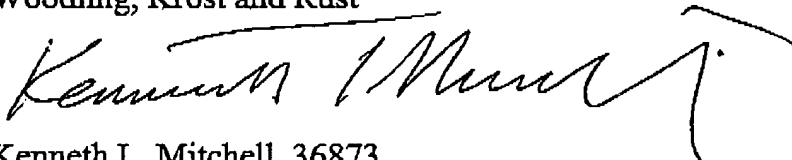
evidence appendix. There are no related appeals to identify in the related appeals appendix. However, an Evidence Appendix and a Related Appeals Appendix are attached.

FEE

A check in the amount of \$250.00 was previously submitted. If there any additional charges, or any overpayment, in connection with the filing of this appeal brief, the Commissioner is hereby authorized to charge any such deficiency, or credit any such overpayment, to deposit account no. 23-3060.

Respectfully submitted,

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AUG 04 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

Applicants: Stephen Selle

Title: ADJUSTABLE THRESHOLD FASTENER WITH FLANGES

Filing Date: April 15, 2004

Serial No. 10/824,915

Examiner: Jeffrey Andrew Sharp

Group Art Unit: 3677

Attorney Docket No. 8206

May 1, 2006

Commissioner for Patents
P. O. Box 1450
Alexandria, Va. 22313-1450

CLAIMS APPENDIX

1. (Original) A fastener comprising:

a threaded stud;

a rectangularly-shaped nut having first and second ends;

said first and second ends each having a raised flange;

and, said threaded stud interengaging said rectangularly-shaped nut.

2. (Original) A fastener as claimed in claim 1 wherein said rectangularly-shaped nut includes a raised crown having interior threads thereon.

3. (Previously Amended) A fastener as claimed in claim 1 wherein said raised flanges extend upwardly partially enveloping said threaded stud.

4. (Original) A fastener as claimed in claim 1 wherein said threaded stud includes first and second adjustment receptacles.

5. (Original) A threshold adjustment device, comprising:

a threaded stud having an adjustment receptacle;

a rectangularly-shaped nut having flanges;

said threaded stud interengaging said nut;

a threshold having a channel;

said channel includes a bore therein;

said threaded stud being press-fit in said bore of said channel; and,

said rectangularly-shaped nut having flanges residing in said channel.

6. (Original) A threaded adjustment device as claimed in claim 5 wherein

said nut is constrained against rotation by said channel.

7. (Original) A threshold adjustment device as claimed in claim 6 wherein

said threaded stud includes a flat head and wherein said flat head is adjustable in a plurality of positions.

8. (Original) A threshold adjustment devices as claimed in claim 6 wherein

said threaded stud threadingly engages said channel of said threshold.

9. (Original) A threshold adjustment device as claimed in claim 6 wherein

said nut includes a first surface and said first surface of said nut engages said

channel of said threshold.

10. (Original) A threshold adjustment device as claimed in claim 7 wherein

said nut includes a first surface and said first surface of said nut engages said

channel of said threshold.

11. (Original) A curvilinear delivery track for delivering a plurality of fasteners, said delivery track includes a head guide and a flange guide, wherein: each of said fasteners comprises a U-shaped in cross-section nut adapted to receive a threaded stud; each said stud includes a support head; each of said U-shaped nuts includes a forward and a rearward flange; said head guides of said delivery track engage said support heads of said fasteners preventing excessive rotation or vertical displacement of said fastener; and, said support heads of said fasteners in combination with said head guide prevent shingling and/or jamming of the delivery track.

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EVIDENCE APPENDIX

NONE

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RELATED APPEALS APPENDIX

(NONE)